

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

JENETTA MCNEAL

v.

WOOD COUNTY CSCD and
DEBRA MIEARS

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Case No. 6:08-cv-418

MEMORANDUM AND OPINION DENYING MOTION TO CONTINUE

Plaintiff filed this employment discrimination action on October 30, 2008, alleging that Defendants fired her because of her race. This case is set for a pretrial conference on January 25, 2010 and jury selection on January 26, 2010. The Court recently denied Defendants' request to continue the trial. The reasons for the Court's denial are set forth below.

This case was originally set on the Court's November 2009 trial docket. The parties agreed to this setting at a scheduling conference in February 2009—nine months prior to the trial setting. Furthermore, the Court's Scheduling Order noted that it would not be modified except upon a showing of good cause.

As the trial approached, however, defense counsel requested a continuance in light of a conflicting trial in state court. The Court denied Defendants' motion to continue, noting that defense counsel agreed to the conflicting state court trial date after the trial schedule was

already set in this case.

The parties proceeded under the original scheduling order, which listed a November 2009 trial date. The parties filed their pretrial material, including their proposed pretrial order, proposed jury instructions, motions in limine, and witness and exhibit lists. But on the eve of trial, Defendants filed an interlocutory appeal of the Court's order denying summary judgment on the issue of qualified immunity. In light of the appeal, the Court cancelled the November trial setting and stayed the case pending resolution of the appeal.

Less than one month later, without filing any briefing in the appellate court and without providing any explanation, Defendants withdrew their appeal. Upon receipt of the mandate from the Fifth Circuit dismissing the appeal, the Court gave this case an expedited trial setting. As noted above, the case is set for pretrial on January 25, 2010 and jury selection on January 26, 2010.

Defendants' opposed motion to continue this expedited setting cites defense counsel's vacation schedule, travel restrictions on another defense attorney, and work-related time constraints of Defendant Debra Miears. None of these rise to the level of good cause to warrant further delay of this case.

The Court is skeptical that Defendants' interlocutory appeal was made in good faith. Instead, it appears that defense counsel manipulated the rules of procedure to receive a continuance that the Court previously had denied. The Court refuses to reward this behavior by resetting the trial date according to defense counsel's vacation plans or due to other

inconveniences incurred by Defendants or defense counsel.

Furthermore, Plaintiff was prepared for a November trial date as ordered by this Court. Plaintiff is now entitled to a trial without further delay.

For the reasons stated above, Defendants' Motion for Continuance (Doc. No. 65) is DENIED.

It is SO ORDERED.

SIGNED this 19th day of January, 2010.

A handwritten signature in black ink, reading "Michael H. Schneider", written over a horizontal line.

MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE